LENA BAKER MAPLES

IBLA 92-130 Decided April 12, 1994

Appeal from a decision of the Alaska State Office, Bureau of Land Management, denying reinstatement of Native allotment application F-14315.

Affirmed as modified.

1. Alaska: Native Allotments

> A request for reconsideration of a prior decision and reinstatement of a previously rejected Native allotment application must be supported by evidence of an error in the original application. The request is properly denied if the party seeking reinstatement has tendered little more than allegations that use and occupancy had commenced before the date stated on the original application, has failed to appeal the initial decision rejecting the application, and has allowed 14 years to pass before seeking reconsideration and reinstatement.

APPEARANCES: Elizabeth M. Bruch, Esq., Barrow, Alaska, for appellant; John T. Baker, Esq., Anchorage, Alaska, for the State of Alaska; Carlene Faithful, Esq., Office of the Regional Solicitor, U.S. Department of the Interior, Anchorage, Alaska, for the Bureau of Land Management.

OPINION BY ADMINISTRATIVE JUDGE MULLEN

Lena Baker Maples, nee Lena Allen (Maples), has appealed from an October 18, 1991, decision by the Alaska State Office, Bureau of Land Management (BLM), denying reinstatement of Native allotment application F-14315.

On September 23, 1971, Maples filed a Native allotment application pursuant to the Act of May 17, 1906, as amended, 43 U.S.C. §§ 270-1 to 270-3 (1970). 1/ Maples described the land subject to her application as 159.95 acres located in secs. 10 and 11, T. 12 N., R. 6 E., Umiat Meridian, Alaska. The area was subsequently surveyed and the land is now described as

1/ The Alaska Native Allotment Act was repealed by the Alaska Native Claims Settlement Act of 1971 (ANCSA), 43 U.S.C. § 1617 (1988), with a savings provision for applications pending on Dec. 18, 1971.

Lot 1, U.S. Survey No. 9999, Alaska. Maples' application stated that she had commenced her use and occupancy of Lot 1 on April 1, 1966.

In a June 14, 1974, decision BLM rejected Maples' application because she had failed to submit evidence of use and occupancy predating State selection application F-031802, filed by the State of Alaska on January 14, 1964. A copy of the decision was served on Maples' attorney of record, and a courtesy copy was sent to the Superintendent of the Bureau of Indian Affairs (BIA) Fairbanks Agency. No appeal was filed by Maples or her attorney. However, BIA filed a document purported to be a notice of appeal which was forwarded to this Board. An inquiry was sent to BIA, Maples, and her attorney of record seeking to establish whether BIA had been authorized to file an appeal on behalf of Maples. When no response was received from Maples, her attorney, or BIA, the Board dismissed the appeal by order dated January 30, 1975.

On September 22, 1987, BIA submitted a request for reinstatement of Maples' Native allotment application to BLM. An affidavit executed by Abraham Woods was enclosed with the request. This affidavit states: "I have knowledge that the Allen family, and those being Neil, Annie, Jim and Lena Baker, have been in the Colville River Delta since about 1964. I know this because I used to hunt, trap and fish [and] I would see this family all the time in the area."

A September 16, 1987, affidavit by Annie Allen states that her husband built a cabin in the area in 1964. On January 20, 1988, Harmon and Martha Helmericks submitted a letter on behalf of Maples. In their letter the Helmericks assert that they sold construction materials to the Allen family for construction of a fish camp, and a barge load of materials was shipped up the Colville River and off-loaded at Pingo Beach on July 30, 1963. The letter states that "[t]he Allens picked up materials in their boat and went on to build a permanent dwelling at their fish camp site."

In an April 7, 1988, notice, BLM advised the State and other interested parties and afforded an opportunity to file protests and comments regarding the request for reinstatement, but none were received. On May 13, 1988, Maples filed an affidavit which stated: "There is an error in my application date [sic] May 13, 1971 as my use of this tract of land began before 1963." The affidavit also stated that in 1963, when she was 12 years old, she helped her parents construct a fish camp on the Colville River, about one-eighth of a mile from the land described in her allotment application.

A BLM examiner conducted a field examination of the land on April 20, 1988. The May 17, 1988, field report notes that Maples was present during the examination and states that she told the field examiner that she "used her allotment area in 1962 and earlier" (Field Report at 1). Under use and occupancy, the report states in part:

> Like most North Slope Natives, the Allen family was nomadic and wandering from place to place was a way of life. Although they had used this portion of the Colville River earlier for fishing,

> in 1962 they started to settle in this area to catch whitefish for a man by the name of Jim Adams. It was this fishing venture that prompted annual use in this particular area. A permanent fish camp about six chains downriver from Lena's allotment area was constructed in 1964 to replace the temporary camp. The materials for the fish camp were obtained from the Helmericks family in 1963.

Id. at 7. The field report mentions affidavits filed by Helmericks, Abraham Woods, Annie Allen (apparently Maples' mother), and by Maples herself, in support of the allotment application. 2/

In its October 18, 1991, decision BLM denied Maples' petition for reinstatement because the application pending before the Department on December 18, 1971, claimed "use and occupancy on April 1, 1966, which was after the land had been granted to the State." (Emphasis in original.) Citing Franklin Silas, 117 IBLA 358 (1991), (appeal filed sub. nom. Silas v. Babbitt, A93 035 CIV, D. Alas. Jan. 29, 1993) BLM found that its June 14, 1974, decision rejecting the application was based on Maples' declaration of material facts demonstrating a legal defect on the face of the application which mandated rejection as a matter of law. BLM also noted Maples failed to appeal the 1974 decision and the passage of 14 years before any action was taken to reinstate her application, the lack of evidence of error in the original application, and the doctrine of administrative finality.

Maples contends on appeal that reinstatement and an opportunity for a hearing are mandated by Pence v. Kleppe, 529 F.2d 135 (9th Cir. 1976), because her allegation that she occupied the land in 1963 rather than 1966 raises an issue of fact. She argues that the doctrine of administrative finality is not applicable because she has been denied due process, and because the Secretary may review previously decided matters to correct an erroneous decision. Maples also contends that section 905(a) of the Alaska National Interest Lands Conservation Act (ANILCA), 43 U.S.C. § 1634(a) (1988), compels reinstatement of applications pending on December 18, 1971.

BLM contends that Silas, supra, is fully dispositive of the present appeal, asserting that no hearing is required because Maples' Native allotment application was insufficient on its face as a matter of law. BLM contends that the doctrine of administrative finality bars reinstatement of the application. It also argues that, under section 905 of ANILCA, the only application pending before the Department on December 18, 1971, was the original application, based upon use and occupancy postdating the State's selection of the lands.

2/ We assume that the document referred to as the Helmericks' "affidavit" is the letter from him, as the file contains no formal Helmerick affidavit. Abraham Woods, Annie Allen, and Maples submitted formal affidavits.

In a reply to BLM's answer, Maples asserts that both BLM and the Board "misapprehend" Pence v. Kleppe, supra, and that Silas, supra, "conflicts with all other cases in which an applicant has raised a factual issue regarding his or her application," and should be reversed (Reply to Government's Answer at 5). Maples cites Andrew Balluta, 122 IBLA 30 (1992); Heirs of Alexander Williams, 121 IBLA 224 (1991); Theodore Suckling, 121 IBLA 52 (1991); Michael Gloko, 116 IBLA 145 (1990); and Heirs of Saul Sockpealuk, 115 IBLA 317 (1990), as examples of conflicting cases. Maples states that her affidavit, the affidavit of Abraham Woods, and the letter written by Bud and Martha Helmericks all demonstrate her use of the parcel predating the State's selection and error in the original application.

The facts in Silas, supra, closely parallel those now before us and we will briefly recount them. Silas filed an allotment application on November 11, 1971. On July 18, 1972, BLM rejected Silas' application after finding that State selection applications predated Silas' use and occupancy. Silas did not appeal the rejection. On August 8, 1986, some 13 years later, Silas sought reconsideration of the 1971 decision and reinstatement of his application. In support of his request he filed an affidavit in which he stated that he had begun using the land in 1960 or 1961, rather than in 1965, the year he stated that he commenced use on his application. In 1986 and 1988, BLM directed Silas to furnish further evidence of his independent use and occupancy of the land. On August 9, 1988, Silas filed three affidavits stating that in 1960 Silas had been observed using the lands.

On March 10, 1989, BLM denied reinstatement. Finding that its 1972 rejection of Silas' application had been based solely on a legal defect, BLM held that no hearing was necessary, and stated that the doctrine of administrative finality precluded reconsideration of an agency decision when a party either fails to exercise the opportunity for Departmental review or appeal the decision in a timely manner.

In his appeal before this Board, Silas argued that he was denied due process, had no opportunity to present evidence before BLM originally rejected his application, and that he must be afforded the opportunity to prove his claim.

[1] The Board's dispositive rationale in Silas, supra at 364, is applicable here. No Pence v. Kleppe hearing is required if, when taking the factual averments of the application as true, the application is insufficient, as a matter of law, and thus affords no relief under the Native Allotment Act, 43 U.S.C. §§ 270-1 to 270-3 (1970). Pence v. Kleppe addressed a dispute of fact regarding the truth of statements made by the applicant on the face of the Native allotment application. When BLM rendered its original decision the averments of facts Maples had made when completing her 1971 Native allotment application were all accepted as true and accurate. In fact those statements were never questioned until Maples raised the question in her May 1988 affidavit, which was not filed until 14 years after BLM rejected her application.

The burden of proof lies with the party seeking reinstatement and that party must submit evidence that clearly demonstrates that the original application contained a significant error. Silas, supra, at 364; Donald Peter, 107 IBLA 272 (1989); William Carlo, Jr., 104 IBLA 277 (1988); Andrew Petla, 43 IBLA 186, 192 (1979). The reason for this is evident.
Maples' assertion that the date she placed on her application was in error is a self-serving statement with no corroboration in the record. In addition, the 1963 date Maples now advances is inconsistent with the date she gave the BLM field examiner (1962), and the date stated in the Woods affidavit ("about 1964").

As previously noted, following BLM's rejection in 1974 this Board sought to determine whether the document filed by BIA was a notice of appeal. The Board inquiry was sent to Maples, her attorneys, and BIA. No response was received from Maples, her attorneys, or BIA, and there has been no attempt to explain this inaction or why Maples allowed 14 years to elapse before alleging error in 1988. All of these circumstances militate against the argument that there was an error in the original application. Moreover, these circumstances are vastly different from Board decisions based upon facts compelling different results. 3/

Maples contends that ANILCA requires reinstatement of her application. However, the only allotment application that could fall within the ambit
of the ANCSA savings provision by being pending before the Department on December 18, 1971, was her application alleging use and occupancy commencing in 1966. This application was rejected by BLM on June 4, 1974, because the land she sought had been formally selected by the State before she had commenced use and occupancy. Accepting each and every statement in her application as true and accurate, her application is properly denied as a matter of law.

Maples' arguments regarding administrative finality were fully addressed in Silas, supra, and recently addressed again in Franklin Silas (On Judicial Remand), 129 IBLA 15 (1994), and need not be re-examined. In Silas we concluded that the lack of evidence that when Silas entered a date in his application he did not enter the date he intended to use was a proper basis for rejecting his petition for reinstatement. We did not invoke the doctrine of administrative finality. To this extent, BLM's decision is

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3/ In Balluta, and Gloko, supra, section 905(a) of ANILCA governed resolution of the appeals. As noted in the decisions, that section of ANILCA provides (with certain exceptions) for legislative approval of Native allotment applications pending before the Department on or before Dec. 18, 1971. BLM closed the Balluta and Gloko applications in 1966 and 1967 when the applicants failed to submit proof of use and occupancy, but did not notify the applicants of its action. Citing Heirs of Saul Sockpealuk, supra, the Board found that the applications were pending on Dec. 18, 1971, and that BLM had failed to process the applications pursuant to section 905(a) of ANILCA. Accordingly, the Board directed BLM to reinstate and adjudicate the applications.

modified. In the course of our review we have also considered the other arguments advanced by Maples. We do not deem a lengthy discussion of our reasons for rejecting those arguments necessary or beneficial.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision appealed from is affirmed as modified.

R. W. Mullen
Administrative Judge

I concur:

Will A. Irwin
Administrative Judge